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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Janelle M Gephart,

10 Plaintiff,

11 v.

12 TD Bank NA, et al.,

13 Defendants.

14 **NO. CV-22-01652-PHX-SMM**

15 **ORDER SETTING RULE 16**  
16 **PRELIMINARY PRETRIAL**  
17 **CONFERENCE**

18 This matter now being ready for a pretrial conference,

19 **IT IS HEREBY ORDERED** that pursuant to Rule 16 of the Federal Rules of Civil  
20 Procedure a Preliminary Pretrial Conference is set for January 20, 2023 at 11:00 a.m. before  
21 the Honorable Stephen M. McNamee in Courtroom #401, fourth floor, Sandra Day  
22 O'Connor U.S. Courthouse, 401 W. Washington Street, Phoenix, Arizona 85003.

23 **\* \* \* N O T I C E \* \* \***

24 **IT IS FURTHER ORDERED:**

25 **1. COUNSEL WHO WILL BE RESPONSIBLE FOR TRIAL OF THE**  
26 **LAWSUIT FOR EACH PARTY SHALL PERSONALLY APPEAR AND**  
27 **PARTICIPATE IN THE PRELIMINARY PRETRIAL CONFERENCE.**

28 Counsel for all parties are directed to Rule 16 of the Federal Rules of Civil  
Procedure for the objectives of the conference. At least one of the attorneys for each  
party attending the conference shall have authority to enter into stipulations and  
make admissions regarding all matters which may be discussed.

1           2. **IN ADDITION TO COUNSEL OF RECORD, EACH PARTY, OR A**  
2 **REPRESENTATIVE OF EACH PARTY (WHO IS NOT COUNSEL OF**  
3 **RECORD) WITH BINDING SETTLEMENT AUTHORITY IF THE PARTY**  
4 **IS AN ENTITY, SHALL BE PRESENT AT THE PRELIMINARY**  
5 **PRETRIAL CONFERENCE. NO PARTY OR COUNSEL SHALL BE**  
6 **EXCUSED FROM PERSONALLY APPEARING AT THE CONFERENCE**  
7 **WITHOUT PRIOR PERMISSION OF THE COURT. See Fed. R. Civ. P. 16(f).**  
8 **Parties who wish to appear telephonically must submit a motion or stipulation**  
9 **stating good cause for doing so no less than one week before the Preliminary**  
10 **Pretrial Conference.**

11           3. Counsel must be prepared to discuss what the parties must prove in order to  
12 prevail on their respective claims or defenses at the time of the Preliminary Pretrial  
13 Conference.

14           4. Counsel should be prepared to discuss logistical matters.

15 **IT IS FURTHER ORDERED** that all parties are directed to meet at least twenty-  
16 one (21) days before the Preliminary Pretrial Conference, in accordance with Rule 26(f) of  
17 the Federal Rules of Civil Procedure, to discuss the following matters:

18           1. The possibility of consent to trial before a United States Magistrate Judge  
19 pursuant to 28 U.S.C. § 636(c), the suitability for referral of this matter to this  
20 District's court-annexed voluntary arbitration program or any other alternative  
21 dispute resolution mechanism, or the reference of this matter to a special master;

22           2. Any matters relating to jurisdiction, venue, or the joinder of additional  
23 parties;

24           3. The nature and bases of their claims and defenses and the possibilities for a  
25 prompt settlement or resolution of the case;

26           4. A schedule of all pre-trial proceedings;

27           5. Modification of pre-trial procedures due to the simplicity or complexity of  
28 the case;

1       6.     Arrangements for Initial Disclosures in compliance with Rule 26(a)(1) of the  
2     Federal Rules of Civil Procedure. Unless otherwise stipulated in writing by the  
3     parties or otherwise directed by a written Order of this Court, Initial Disclosures  
4     shall be made at the initial Rule 26(f) case management meeting or within fourteen  
5     (14) days after the meeting; and

6       7.     Any other matters which counsel may feel will help dispose of the matter in  
7     an efficient manner.

8       **IT IS FURTHER ORDERED** that to satisfy the requirements of Federal Rule of  
9     Civil Procedure 26(a) the parties shall file with the Clerk of the Court a Notice of Initial  
10    Disclosure; copies of the actual disclosures shall therefore not be filed.

11      **IT IS FURTHER ORDERED** that at the Rule 26(f) case management meeting, the  
12     parties shall develop a **Proposed Case Management Plan** which shall include brief  
13     statements or proposals concerning:

14       1.     The nature of the case, setting forth in brief statements the factual and legal  
15     basis of plaintiff's claims and defendant's defenses;

16       2.     A list of the elements of proof necessary for each count of the complaint and  
17     each affirmative defense. Where the burden of proof shifts, each party shall list the  
18     elements of the claim or defense that the party must prove in order to prevail. The  
19     list of the elements of proof must contain citations to relevant legal authority (i.e.,  
20     United States statutory and/or administrative law, U.S. Supreme Court case law,  
21     Ninth Circuit Court of Appeals case law, Arizona state case and statutory law, or  
22     other authority as dictated by conflicts of law rules);

23       3.     The factual and legal issues genuinely in dispute, and whether they can be  
24     narrowed by stipulation or motion;

25       4.     The jurisdictional basis of the case, citing specific statutes;

26       5.     Parties, if any, which have not been served, as well as parties which have not  
27     filed an answer or other appearance. Unless counsel can otherwise show cause, a  
28     proposed form of order shall accompany the joint Case Management Plan which

dismisses any party which has not been served, or seeks default judgment on any non-appearing party;

6. The names of parties not subject to the Court's jurisdiction;

7. Whether there are further dispositive or partially dispositive issues to be decided by pretrial motions, and the legal issues about which any pretrial motions are contemplated;

8. Whether the case is suitable for reference to arbitration, to a special master, or to a United States Magistrate Judge for trial;

9. The status of related cases pending before other judges of this Court or before other courts;

10. Suggested changes, if necessary, in the timing, form, or requirement for disclosures under Rule 26(a), Federal Rules of Civil Procedure, including a statement of when Initial Disclosures were made or will be made;

11. Proposed specific dates for each of the following:

a. A deadline for the completion of fact discovery;<sup>1</sup>

b. Dates for full and complete expert disclosures under Federal Rule of Civil Procedure 26(a)(2)(A)-(C);

c. A deadline for completion of all expert depositions;

d. A deadline for filing dispositive motions;

e. A date by which the parties shall have engaged

settlement talks;

12. The scope of discovery and whether discovery should be conducted in phases or should be limited to or focused upon particular issues. For example, where dispositive motions will be filed (e.g., motions for summary judgment or a defense relying on the statute of limitations), counsel should consider limiting discovery to

<sup>1</sup> The discovery deadline is the date by which all discovery must be completed. Discovery requests must be served and depositions noticed sufficiently in advance of this date to ensure reasonable completion by this deadline, including time to resolve discovery disputes. Absent extraordinary circumstances, the Court will not entertain discovery disputes after this deadline.

1 the issue at hand until the court has ruled on the motion. Counsel should keep in  
2 mind that the Rule 26(b)(1) scope of discovery has been changed, that  
3 proportionality is now part of the scope of discovery, and that the “reasonably  
4 calculated to lead” language has been deleted from the rule. The intent of these  
5 changes is not to deprive parties of evidence reasonably needed to prove their claims  
6 or defenses, but instead to ensure that discovery is relevant and proportional to the  
7 needs of the case;

8 13. Suggested changes, if any, in the limitations on discovery imposed by the  
9 Federal Rules of Civil Procedure and LRCiv 16.2;

10 14. Estimated date that the case will be ready for trial, the estimated length of  
11 trial, and any suggestions for shortening the trial;

12 15. Whether a jury trial has been requested and whether the request for a jury  
13 trial is contested. If the request for a jury trial is contested, the Proposed Case  
14 Management Plan shall set forth the reasons that a trial by jury is in dispute;

15 16. The prospects for settlement, including any request to have a settlement  
16 conference before another United States District Court Judge or Magistrate Judge,  
17 or other request of the court for assistance in settlement efforts; and

18 17. Any other matters which counsel feel will aid the Court in resolving this  
19 dispute in a just, speedy, and inexpensive manner.

20 **IT IS FURTHER ORDERED** that all deadlines to which the parties stipulate in  
21 the Proposed Case Management Plan shall fall on a Friday barring extenuating  
22 circumstances which make doing so impracticable.

23 **IT IS FURTHER ORDERED** that counsel shall jointly file their Proposed Case  
24 Management Plan with the Clerk of the Court **not less than five (5) business days** before  
25 the Preliminary Pretrial Conference. Absent extraordinary circumstances, no extensions of  
26 time will be granted.

27 **IT IS FURTHER ORDERED** that it is the responsibility of counsel for the  
28 Plaintiff(s) to initiate the communications necessary to prepare the joint Proposed Case

1 Management Plan. Once contacted by counsel for Plaintiff(s), counsel for Defendant(s)  
2 shall act in an expeditious manner to effectuate the preparation of the Case Management  
3 Plan.

4 **IT IS FURTHER ORDERED** that counsel for all parties are expected to comply  
5 with Rule 26 of the Federal Rules of Civil Procedure, and to minimize the expense of  
6 discovery.

7 **IT IS FURTHER ORDERED** that the Court, after consultation with counsel and  
8 the parties, will enter a Rule 16(b) Scheduling Order concerning, *inter alia*, discovery and  
9 dispositive motions. To the extent that the Court's Rule 16 Scheduling Order differs from  
10 the parties' Proposed Case Management Plan, the provisions of the Court's Order shall  
11 supersede the parties' Proposed Case Management Plan and shall control the course of this  
12 action unless modified by subsequent Order of this Court. The parties and their counsel are  
13 all cautioned that the deadlines set in the Rule 16 Scheduling Order shall be strictly  
14 enforced.

15 **IT IS FURTHER ORDERED** that counsel review the requirements of LRCiv 7.1  
16 and LRCiv 7.2, Rules of Practice of the United States District Court for the District of  
17 Arizona, with their administrative/support personnel to ensure that all pleadings are in  
18 compliance with the rules.

19 **IT IS FURTHER ORDERED** that this Court views the Preliminary Pretrial  
20 Conference as critical to its case management responsibilities and the responsibilities of  
21 the parties under Rule 1 of the Federal Rules of Civil Procedure. **FAILURE TO**  
22 **COMPLY WITH EVERY PROVISION OF THIS ORDER MAY LEAD TO**  
23 **SANCTIONS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 16(f).**

24 **IT IS FURTHER ORDERED** that the Clerk of the Court send copies of this Order  
25 to any party appearing in *propria persona*.

26 Dated this 12th day of December, 2022.

27   
28 Honorable Stephen M. McNamee  
Senior United States District Judge